Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Part 69 Allocation of General Support Facility Costs	)	CC Docket No. 92-222
	)	

<u>PETITION FOR RECONSIDERATION</u>

MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, respectfully petitions the Commission pursuant to 47 CFR § 1.429 to reconsider the Report and Order approving rules amendments in this docket. *Amendment of the Part 69 Allocation of General Support Facilities Costs*, FCC 93-238 (released May 19, 1993) (the *"GSF Order"*). Those rules required local exchange carriers ("LECs") to change the allocation of their General Support Facilities (GSF) costs among the various Part 69 access elements, resulting in net reductions in the emergingly competitive special access of their most competitive high-capacity special access rates in the process of implementing this cost allocation change.[2] The Report and Order denied both requests. By this Petition, MFS respectfully requests that the Commission reconsider its decision to implement GSF cost reallocation immediately, rather than concurrently with resolution of other LEC pricing issues.

The Commission concluded in the *GSF Order* that cost allocation changes should be implemented immediately, in order to "correct" a non-cost-based "misallocation" between access service categories. *Order*, para. 11 & n.40. The actual effect of the reallocation, however, will be to improve the competitive position of the LECs in the special access market by enabling them to reduce the rates for those services that are most exposed to emerging competition (and, if and when competition is introduced into the switched transport market, a similar effect will occur there). Significantly, this docket was initiated by the Commission as a direct result of comments filed by LECs in the *Expanded Interconnection* proceeding, CC Docket No. 91-141, claiming that the allocation of GSF costs would put these carriers at a competitive disadvantage in the special access market if expanded interconnection were mandated. The Commission determined that a change in the cost allocation rules would be preferable to imposing a "contribution" charge on interconnectors designed to offset the effects of the alleged misallocation, and therefore proposed the rules that it later adopted in this docket.[3]

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[2] *See* MFS Comments at 6; MFS Reply Comments at 3.

[3] *Expanded Interconnection*, 7 FCC Rcd. 7369, paras. 147, 267-69 (1992).

Although the Commission sought to justify its adoption of the GSF reallocation solely on grounds of cost-based pricing and economic efficiency, competitive considerations explicitly underlay this decision. MFS does not oppose, in concept, the revision or elimination of regulatory rules that interfere with efficient pricing in markets where effective competition actually exists; but the Commission must be extremely cautious that in seeking to "level the playing field" it does not inadvertently tip the balance in favor of one set of competitors. Unfortunately, that appears to be happening now, as the Commission has moved rapidly to enable LECs to improve their competitive positions through GSF reallocations and, in another outgrowth of the *Expanded Interconnection* decision, approval of special access zone density pricing plans;[4] but has delayed action on pricing issues that are severely impairing the competitive position of interconnectors, namely unrestrained volume and term discounts and expanded interconnection pricing.

MFS' Emergency Petition in this docket demonstrated that LECs enjoy a substantial and unwarranted advantage today in the special access market through their ability to offer unrestrained volume and term discounts. These discounts need not be related to cost, may be increased and realigned on an expedited basis without meaningful regulatory review or oversight, and can be applied in a selective and unreasonably discriminatory fashion to enable LECs to "lock up" the special access demand of the few major interexchange carriers who account for the majority of the market. Although the Commission directed the Common Carrier Bureau to study these discounts at the same

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[4] *See BellSouth Telecommunications, Inc., et al.*, DA 93-726 (released June 18, 1993).

time and in the same order that it proposed GSF reallocation, no action has been taken to date to limit the potential abuse of discounts by LECs. Thus, a substantial obstacle to the competitiveness of MFS and other potential interconnectors remains in place indefinitely, while the alleged cost allocation obstacle to LEC competitiveness has been removed speedily.

Recent events have created additional, urgent grounds for the Commission to be concerned about an excessive regulatory "tilt" in the special access market. Earlier this month, the Common Carrier Bureau suspended and instituted an investigation of LEC expanded interconnection tariffs under Section 204(a) of the Communications Act, in response to petitions filed by MFS and nine other parties. *Ameritech Operating Companies Revisions to Tariff FCC No. 2, et al.*, CC Docket No. 93-162, Order, DA 93-657 (Comm. Carr. Bur. released June 9, 1993) (the *"Collocation Tariff Suspension Order"*). MFS and other petitioners had demonstrated that the LEC tariff filings were grossly unjust and unreasonable, and amounted to a blatant effort to evade the Commission's expanded interconnection policy by offering collocation on terms so unfavorable that (in most cases) it would make no economic sense for any party to accept the offer. The Bureau sought to correct some of the most obvious instances of double counting and

Until the Bureau has completed its full-fledged investigation of the collocation tariffs, many unreasonable rates and conditions of service will remain in effect and will substantially limit the potential for competitive entry into interstate special access markets. Companies considering making large capital investments in the construction of new or expanded competitive access networks will likely wait and see what permanent tariff structure emerges from the investigation. Thus, the LECs' tactics of filing patently unreasonable tariffs and forcing the Commission into an investigation have effectively succeeded in postponing the development of effective access competition.

No matter how desirable it may be in principle to remove all obstacles to competition in interstate access markets, it is highly inappropriate to remove all the obstacles from one side of the field before even starting on the other side. Although the Commission undoubtedly did not intend such a result, its recent efforts have had the effect of clearing the field for the LECs while requiring their prospective competitors to wait many months, or even years, for action on the pricing issues that prevent them from competing effectively.

The Commission should, therefore, reconsider its decision to implement GSF reallocation immediately, and should strive for a coordinated approach to resolution of pricing issues in the special access market that does not favor one set of parties over another.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June 1993, copies of MFS Communications Company, Inc.'s Petition for Reconsideration were served by first class mail, postage prepaid, on the following:

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